

The complaint

A company I'll refer to as C have complained that Royal and Sun Alliance Insurance Plc (RSA) unfairly turned down their business interruption insurance claim after they were forced to close due to the Covid-19 pandemic.

Mr D, a director of C, has brought the complaint on C's behalf.

What happened

C hold a business interruption insurance policy with RSA. They claimed on their policy after they were required to close due to the Government's actions in response to Covid-19.

RSA said that, while the policy covered business interruption as a result of a notifiable disease at the premises, C had closed as a result of the Government Act in response to the national pandemic. As C hadn't indicated that there had been a case of Covid-19 at their business premises which caused them to close, RSA turned down their claim.

C were unhappy with RSA's response and brought their complaint to our service. They said they'd been required to close by the Government due to Covid-19. They believed RSA should cover their claim as they'd been forced to close through no fault of their own.

Our investigator looked into C's complaint but didn't recommend it be upheld. He thought RSA had turned down the claim in line with the terms and conditions of the policy. He thought the policy would only cover closure due to Covid-19 if there had been a case at the premises. And as there hadn't been a case of Covid-19 at the premises, the claim wasn't covered.

C asked if the Supreme Court judgment on the Financial Conduct Authority's (FCA) test case made a difference to the outcome of their claim.

RSA said it had reconsidered C's claim following the Supreme Court judgment but, in order for the claim to be covered, C would need to have had a case of Covid-19 at their business premises. As C hadn't indicated that there was a case of Covid-19 at their premises, RSA maintained that it had acted correctly in turning down their claim.

C asked for an ombudsman's decision. They said it was impossible to know whether anyone at their premises had Covid-19 as many people were asymptomatic. They also felt that they had done the right thing in closing, as required by the Government, and that RSA wasn't treating them fairly in refusing to pay their claim.

Before I considered C's complaint, our investigator asked C if they'd had a case of Covid-19 at their premises, even if they hadn't closed because of it. C said their secretary had recently received a positive test result for Covid-19 and had recognised the symptoms as being the same as those she'd experienced in March 2020.

I issued a provisional decision on this complaint on 23 April 2021 where I explained why I didn't intend to require RSA to pay C's claim. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry to hear that the pandemic and the Government's related actions had an impact on C's business. But I don't intend to uphold their complaint. I'll explain why.

Business interruption insurance offers protection from risks common to a business, but different policies can provide different types of cover. What is and isn't covered is set out in the policy terms and conditions. I've therefore looked carefully at this particular policy to see if RSA has acted fairly, reasonably and in line with the terms and conditions of the policy when declining C's claim.

The most relevant part of C's policy covers loss as a result of:

*"closure or restrictions placed on the **Premises** on the advice or with the approval of the Medical Officer of Health of the Public Authority as a result of a notifiable human disease manifesting itself at the **Premises**"*

For this extension to provide cover, the policy requires the closure or restrictions placed on the business premises to have been the result of a case of a notifiable human disease manifesting itself at the premises. Covid-19 is a notifiable disease, so I've considered the information I have to decide if I think it's most likely there was a case of Covid-19 at C's premises.

Widespread testing wasn't available towards the start of the pandemic, and the Government advised people to avoid using health services if they were displaying symptoms of Covid-19, save for emergencies. It's therefore rare that a business will be able to produce a positive test result, or conclusive diagnosis, from that period. And to treat that as a requirement to demonstrate a case on the premises would, in my view, be unfair.

It's therefore necessary to take a more pragmatic approach, and to consider whether other evidence can be provided that supports, on the balance of probabilities, that Covid-19 manifested itself at the insured premises prior to closure. As with any insurance claim, the burden of proof initially rests with the policyholder to demonstrate that it's suffered a loss its policy covers.

When asked by RSA, C didn't identify anyone who'd had Covid-19 on their premises. However, they said that it would be difficult to know as many people were asymptomatic. I appreciate that many people with Covid-19 were asymptomatic, but the majority of people at that time clearly didn't have Covid-19. So, I don't think I can say that it's likely someone at C's premises had Covid-19.

When asked later, C said that their secretary had recently received a positive test result for Covid-19 and was of the view that she'd experienced the same symptoms back in March 2020. C said their secretary had continued to work at that time as she wasn't too unwell and wasn't aware it could have been Covid-19.

It's unclear why C didn't tell RSA about their secretary thinking she'd had Covid-19 sooner, but it could be because her positive test result was received in between RSA reconsidering the claim and our investigator asking C for further information. However, I don't think that matters to the outcome of my decision.

We asked C for any further evidence to support the view that their secretary most likely had Covid-19 in March 2020. However, none has been provided. I understand this is because

the secretary didn't realise at the time that her symptoms could be caused by Covid-19. But I don't think the secretary's testimony alone is enough for me to fairly conclude that there was most likely a case of Covid-19 at C's premises.

C also referred to the Supreme Court judgment on the FCA's test case. However, the test case didn't consider all policies or all terms, and whether a claim should be paid still depends on the terms contained in the policy.

I appreciate my decision will be disappointing to C, but I don't intend to require RSA to pay their claim.

RSA didn't respond to my provisional decision. However, C didn't agree. They felt my decision was morally wrong and said that they felt cheated by the interpretation of the clause. They said they'd provided a truthful account of events and confirmed that the reason they hadn't told RSA about their secretary believing she had Covid-19 was because their complaint was already with us.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I understand C's frustration with my provisional decision, but I think that the extension is clear that the policy will only provide cover if the closure or restrictions placed on C's business premises are as the result of a notifiable human disease manifesting itself at the insured premises.

While I don't doubt that C has provided a truthful account, I haven't seen enough to fairly conclude it's most likely there was a case of Covid-19 manifesting itself at C's business premises. So, I see no reason to depart from my provisional decision.

My final decision

For the reasons set out above, and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 14 June 2021.

Sarann Taylor
Ombudsman